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February 1, 2017

VIA FOIAOnline AND FIRST CLASS MAIL
Regional Freedom of Information Officer
U.S. EPA, Region 3
1650 Arch Street (3PA00)
Philadelphia, PA 19103

Re: Freedom of Information Act Request for Records Related to the Washington Aqueduct
Water Treatment Plant

To whom it may concern:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, the Institute for Public Representation ("IPR"), on behalf of Potomac Riverkeeper Network, hereby requests that the Environmental Protection Agency ("EPA") Region 3 provide or make available for viewing and copying the Records listed below.

For the purposes of this request, "Record(s)" is defined as any analyses, audits, charts, compliance schedules, correspondence, data, designs, documents, drafts, drawings, E-mails, facsimiles, images, inspection reports, letters, logs, manifests, maps, meeting minutes, memoranda, monitoring results, notes, permits, photographs, plans, reports, studies, summaries, testing results, and written records of telephone conversations. Plural and singular terms are understood to be interchangeable and encompass singular and plural items in all cases. The terms "and" and "or" are understood to be interchangeable, and in all cases to convey the most encompassing meaning possible.

Potomac Riverkeeper Network hereby requests the following Records in EPA Region 3's possession, custody, or control, including Records prepared by a consultant or contractor, related to the Washington Aqueduct Water Treatment Plant (including the Dalecarlia and Georgetown Sedimentation Basins):

* Admitted to the bars of New York and New Jersey. Supervised by a member of the DC bar.

1. Any National Pollutant Discharge Elimination System ("NPDES") permits and permit fact sheets issued between October 1, 2008 and the present to the United States Army Corps of Engineers for the Washington Aqueduct Water Treatment Plant under § 402(a) of the Clean Water Act.
2. Records related to the grant, denial, renewal, or administrative extension, including the basis for the extension, of NPDES permit number DC0000019 dated between October 20, 2008 and the present.
3. Any records submitted to EPA Region 3 by the United States Army Corps of Engineers or forwarded to EPA Region 3 by a state or federal agency pursuant to NPDES permit number DC0000019 between November 1, 2011 and the present, including but not limited to Discharge Monitoring Reports (DMRs), self-monitoring reports, reports on upsets or bypasses, 5 day reports, and annual discharge reports.
4. Records related to alleged or actual violations of the terms, conditions, or limitations of NPDES permit number DC0000019 between November 1, 2011 and the present, including but not limited to violations occurring from July 1, 2014 to December 13, 2014, July 1, 2016 to October 1, 2016, and October 1, 2016 to December 31, 2016.
5. Records containing reports of damage, leaks, or malfunctions related to the operation or maintenance of the Washington Aqueduct Water Treatment Plant (including the Dalecarlia and Georgetown Sedimentation Basins) between November 1, 2011 and the present.
6. Records related to enforcement of and compliance with NPDES permit number DC0000019, including but not limited to, EPA formal or informal enforcement actions, such as any warning letters, verbal or written notices of violations, citations, or administrative orders; any judicial action; and correspondence relating to EPA enforcement and compliance measures during the period between November 1, 2011 and the present.
7. Records related to EPA site inspections of the Washington Aqueduct Water Treatment Plant (including the Dalecarlia and Georgetown Sedimentation Basins) between November 1, 2011 and the present.
8. Any records from January 1, 2012 to present containing communications between the United States Army Corps of Engineers, EPA Region 3 and the National Marine Fisheries Service regarding the Washington Aqueduct Water Treatment Plant and the listing of the Atlantic sturgeon (Chesapeake Bay DPS) as endangered under the Endangered Species Act (ESA). This includes records related to consultation under Section 7(a)(2) of the ESA and communications related to the proposed designation of Critical Habitat for the Atlantic Sturgeon under Section 4(b)(2) of the ESA between the United States Army Corps of Engineers, EPA Region 3 and the National Marine Fisheries Service.

9. Any other record containing communications between the United States Army Corps of Engineers and EPA Region 3 related to the terms, conditions, or limitations of NPDES permit number DC0000019 between November 1, 2011 and the present.

Because this request includes electronic communications, we would accept electronic copies of Records produced in an accessible format.

If an exemption is claimed for all or any of the requested Records, we ask that you provide detailed descriptions of all withheld Records and specific explanations of applicable exemptions in compliance with the requirements of FOIA as described in *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Where a record contains information that is claimed as exempt or privileged, we request that you redact that information and produce the Record in redacted form. Potomac Riverkeeper Network and IPR reserve the right to appeal your decision to withhold any information.

Potomac Riverkeeper Network and IPR request that EPA make the enumerated Records listed above available for inspection and copying free of charge pursuant to FOIA's public interest waiver. "[D]isclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); see 40 C.F.R. § 2.107(l).

First, disclosure of the information requested above is in the public interest because it is likely to contribute significantly to "public understanding of the operations or activities of the government," as assessed under the four factors outlined in 40 C.F.R. § 2.107(l)(2). First, the subject matter of this request concerns "the operations or activities of the government" as it involves EPA monitoring of NPDES permits and Army Corps of Engineers operations. See *id.* § 2.107(l)(2)(i). Potomac Riverkeeper Network is requesting this information, in part, to determine how EPA is carrying out its oversight and enforcement responsibilities under the Clean Water Act.

Second, disclosure is "likely to contribute" to an understanding of government operations or activities by the public. See *id.* § 2.107(l)(2)(ii). The requested information will enable Potomac Riverkeeper Network and the general public to discover information related to EPA Region 3's oversight of the Army Corps of Engineers' compliance with the NPDES permit for the Washington Aqueduct Water Treatment Plant. Although some information about the facility's compliance history is available online, the records online are incomplete and do not contain the level of detail needed to understand the government operations and activities entirely. Further, the requested information is not duplicative or substantially identical. See *id.* For example, EPA's Enforcement and Compliance History Online indicates that the Washington Aqueduct Water Treatment Plant reported an unauthorized discharge occurring between December 13, 2016 and December 19, 2016, but the online database does not indicate the pollutants discharged or the quantities discharged. Potomac Riverkeeper Network is requesting information to verify this violation, discover other potential violations, as well as determine what, if any, enforcement action EPA Region 3 has taken against the facility in response.

Third, disclosure will contribute to “public understanding.” *See id.* § 2.107(l)(2)(iii). Potomac Riverkeeper Network is a nonprofit organization that advocates for improved water quality in the Potomac River watershed on behalf of its members and the six million residents of DC, Maryland, Virginia, and West Virginia. Potomac Riverkeeper Network not only draws attention to water pollution issues, but also works to organize collective legal and advocacy campaigns to ensure water quality and reduce water pollution. Potomac Riverkeeper Network will use the requested information to inform its members and the public about possible violations of federal and state environmental laws, thus this disclosure will contribute to public understanding.

Fourth, the disclosure is likely to contribute “significantly” to public understanding of EPA Region 3’s actions regarding the administration, monitoring, and enforcement of the NPDES permit program. *See id.* § 2.107(l)(2)(iv). In this case, the disclosure would increase the public’s understanding of the particular NPDES permit significantly as compared to the “public understanding existing prior to the disclosure” as much of the information regarding the facility is missing or incomplete. *See id.* Furthermore, without the requested information, Potomac Riverkeeper Network, IPR, and the public at large cannot accurately determine if the facility is complying with federal environmental laws, specifically the Clean Water Act, or if EPA Region 3 is taking action to address possible violations.

The second fee waiver requirement under 40 C.F.R. § 2.107(l) is that disclosure of the requested records is “not primarily in the commercial interest of the requester.” *Id.* § 2.107(l)(1), (3). Here, neither Potomac Riverkeeper Network nor IPR has any commercial interest in the requested records. IPR is a public interest law firm and clinical education program established at Georgetown University Law Center in 1971. IPR provides legal counsel for groups and individuals who are otherwise unable to obtain effective legal representation on matters that have a significant impact on issues of broad public importance. Potomac Riverkeeper Network is a non-profit organization that works not only to enforce and improve law to reduce water pollution, but also to protect and enhance public river use.

Therefore, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107, Potomac Riverkeeper Network and IPR are eligible for a fee waiver of all search and copying expenses. If, after reviewing this request, you determine that a full fee waiver is not warranted, please contact Peter DeMarco at (202) 662-9549, via email at peter.demarco@georgetown.edu, or at the address listed below to arrange an opportunity to view the records before assessing fees.

Please provide notification of your determination as to the availability of the requested Records within 20 days of receipt of this request, as required by 5 U.S.C. § 552(a)(6)(A)(i).

Thank you for your prompt attention to this matter and please let me know what, if anything, I can do to clarify this request or to make the production of records more efficient.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter DeMarco", with a long horizontal flourish extending to the right.

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